IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Mat.Appeal.No. 27 of 2006()

APPELLANT/PETITIONER:

V.T. SURYA PRABHA,
D/O. V. THRIVIKRAMA PRABHU, VEMBRAKKATTU HOUSE,
V.T. LINE, PALLURUTHI, ERNAKULAM DISTRICT.

BY ADV. SRI.A.X.VARGHESE

RESPONDENTS/RESPONDENTS:
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1. **SAJEEV KAMMATH, S/O. G.R.C. KAMMATH,**
   SAJEEVALAYAM HOUSE, P.O. MALA,
   PATTALAPPADY, THRISSUR DISTRICT.

2. **SOMALAVATHY, RESIDING AT SAJEEVALAYAM**
   HOUSE, MALA P.O., PATTALAPPADY,
   THRISSUR DISTRICT.

3. **RAJEEV KAMMATH, S/O. LATE G.R.C.KAMMATH**
   SAJEEVALAYAM HOUSE, P.O. MALA,
   PATTALAPPADY, THRISSUR DISTRICT.

4. **R. GEETHA, D/O. LATE G.R.C. KAMMATH,**
   SAJEEVALAYAM HOUS, P.O. MALA,
   PATTALAPPADY, THRISSUR DISTRICT.

5. **R. LATHA, D/O. LATE G.R.C. KAMMATH,**
   RESIDING AT SAJEEVALAYAM HOUSE,
   P.O. MALA, PATTALAPPADY, THRISSUR DISTRICT.

BY ADV. SRI.C.VALSALAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 09/10/2007, ALONG WITH M.A.NO.29/2006 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

Mat.Appeal.NOS.27, 29, 54 & 78 of 2006 ()

Dated this the 9th day of October, 2007

J U D G M E N T

KOSHY,J.

The appellant in this case married the respondent on 8.4.2001 as per the Hindu rites. The husband filed O.P.No.523/2002 for declaring that the marriage was null and void and the marriage was never consummated and the wife was impotent and marriage took place by suppressing serious ailments of the wife. Again husband filed O.P.No.732/2004 for recovery of gold ornaments adorned on the wife during the time of betrothal and marriage or its worth Rs.88,000/- with interest. O.P.No.1230/2003 is filed by the wife for recovery of sum of Rs.1 lakh with 9% interest per annum and for recovery of 36.5 sovereigns of gold ornaments or its value. Total claim amount was Rs.1,64,250/-. The Family Court after detailed consideration of evidence adduced by both sides found that petitioner has not fully informed to the husband before the marriage and marriage was not consummated. So for various reasons marriage was declared null and void allowing

O.P.No.523/2002. O.P.No.732/2004 filed by the husband was allowed in part directing him to recover of $9^{3}/_{4}$ sovereigns of gold ornaments and a Titan watch or to recover a sum of Rs.41,500/- from his wife or father. O.P.No.1230/2003 was also partly allowed and Family Court directed the petitioner husband to return $1^{1}/_{2}$ sovereigns gold ornaments or its value of Rs.6,000/- with 6% interest. Against the above three decrees, these three appeals were filed by the wife. I.A.No.233/2004 filed for permanent alimony was dismissed as marriage lasted only for one month and also marriage was declared null and void due to fraud and non disclosure of details of ailment. It is also submitted by the counsel for the appellant that the respondent husband has married one Deepa during the pendency of appeal. But according to the respondent they were living together and no formal marriage application was filed. But in any event it is revealed that two criminal cases were filed at the instance of the wife against the husband before the Judicial First Class Magistrate Court for bigamy etc. When the case was posted several times discussions took place. Husband and parents of wife were present. Finally in open court matter was agreed to be settled.

It was agreed by the respondent husband and his counsel that the respondent husband will pay a compensation of Rs.3 lakhs to the wife and will not recover the decreed amount in O.P.No.732/2004 in full and final settlement of all the claims of the wife and all disputes between them. It is submitted that out of the Rs.3 lakhs, Rs.1 lakh will be paid on or before 23.10.2007 and the entire balance amount will be paid on or before 31.12.2007. Counsel for the appellant wife and parents and counsel for the respondent husband agreed for the same. On payment of the above amount, it is also undertook that the appellant will not press the criminal cases and respondent can produce copy of this judgment before the criminal court for discharge. With regard to suppression of ailments, evidence shows that husband knew about the ailment and he has taken her to doctor even before marriage. But full details of earlier treatment were not made known to him. It is very difficult to say that there is fraud on the part of the wife or parents especially considering the letters Exts.B1 and B2 written by husband. But they lived together only for one month and marriage was never consummated. Wife filed criminal cases. We also note that payment of Rs.3 lakhs as compensation is

reasonable. In these circumstances, on payment of the amount, marriage will stand dissolved as irretrievably broken for non consummation. Judgment and decree in O.P.No.523/2004 shall stand modified accordingly and O.P.No.732/2004 and O.P.No.1230/2003 stand dismissed. The amount already deposited as maintenance before the Family Court can be withdrawn by the wife. That is, over and above Rs.3 lakhs compensation agreed. If the amount agreed to be paid by the husband is not paid then appellant will be free to approach this Court for further reliefs and review. These appeals are disposed of with the above directions.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

11th September, 2007